



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 4354-98
28 September 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552
(b) SECNAVINST 1910.4B

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged by reason of physical disability.
2. The Board, consisting of Ms. Moidel and Messrs. Bartlett and Schultz, reviewed Petitioner's allegations of error and injustice on 16 September 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Although, it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.
 - c. Petitioner entered on active duty on 12 December 1950, with one year of prior service. He was convicted by summary court-martial on 3 May 1951 of twenty days of absence without authority. He was convicted by special court-martial on 28 August 1951 of absence without authority from 26 July to 22 August 1951. On 11 September 1951, Petitioner made a sworn statement in which he admitted that he had engaged in homosexual activity while serving in the Navy. He was discharged under other than honorable conditions on 30 November 1951, pursuant to his request for discharge in lieu of trial by general court-

martial for engaging in homosexual activity.

d. Reference (b) sets forth current Department of the Navy policies, standards and procedures for administratively separating enlisted service members. With regard to homosexual activity, it provides that service members who are processed for discharge for having engaged in such activity may not receive a discharge under other than honorable conditions unless the activity was accompanied by aggravating circumstances, such as through force, with a person under 16 years of age or a subordinate, openly in public view, for compensation, aboard a naval vessel or aircraft, or in another location subject to military control under aggravating circumstances noted to have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

e. Petitioner's naval record does not disclose the presence of aggravating circumstances accompanying his homosexual activity which would warrant the issuance of a discharge under other than honorable conditions under the provisions of reference (b).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner has failed to submit sufficient relevant evidence to demonstrate that he was unfit by reason of physical disability at the time of his discharge. Based on current Department of the Navy policy as established in reference (b), which is substantially less severe than the policy in effect in 1951, it would be in the interest of justice to correct Petitioner's record to show that he was discharged under honorable conditions.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that on 30 November 1951, he was discharged under honorable conditions vice under other than honorable conditions.

b. That the remainder of his request for correction of his record be denied.

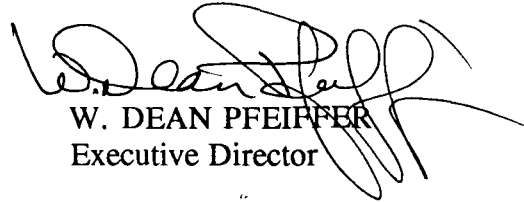
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director